

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7171 of 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VELJI KANTHAD HUMBAL

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
SERVED BY DS for Respondent No. 3

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and
MR.JUSTICE M.S.SHAH

Date of decision: 26/12/97

(C.A.V.) JUDGEMENT (Per M.S.Shah J.) :

This petition under Article 226 of the Constitution challenges the constitutional validity of the provisions of Section 59(1) of the Gujarat Panchayat

Act, 1993 (hereinafter referred to as the Act) and also challenges the order of suspension passed by the District Development Officer and confirmed by the Additional Development Commissioner in appeal suspending the petitioner from the post of Sarpanch of Bhimasar Gram Panchayat in Anjar Taluka of District Kutch. Section 59(1) of the Act reads as under:

59. (1). The District Development Officer may suspend from office the Sarpanch or the Upa-Sarpanch of a village panchayat against whom any criminal proceedings in respect of an offence involving moral turpitude have been instituted or who has been detained in a prison during trial for any offence or who is undergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat under section 30 or who has been detained under any law relating to preventive detention for the time being in force.

2. The learned counsel for the petitioner initially addressed us at some length on the question of constitutional validity of the provisions of Section 59 of the Act. He submitted that the provisions were arbitrary and in violation of the fundamental right of the petitioner under Art.14. He submitted that the power of suspension of an elected Sarpanch makes serious inroads into the well accepted principles of democracy and the power was capable of being abused by false malafide complaints being filed against the Sarpanch/Upsarpanch.

No doubt, the power to suspend a democratically elected Sarpanch/Upsarpanch is a serious power and it may in a given case be abused by filing of a false malafide complaint in respect of an offence involving moral turpitude but as per the settled legal position mere possibility of abuse of a statutory power cannot be a ground to strike it down as unconstitutional. This power has been conferred by legislative provisions enacted by elected representatives of the people in the entire State. The right to hold the post of Sarpanch/Upsarpanch is not a constitutional right but it is a right conferred by a statute which also confers power on the District Development Officer - the Chief Executive Officer of the District Panchayat - to suspend the Sarpanch/Upsarpanch against whom any criminal proceeding in respect of an offence involving moral turpitude has been instituted or any other contingency specified in Section 59 of the Act

has arisen. In the present case we are not concerned with any other contingency referred to in section 59(1) of the Act. It would obviously be against public interest to permit a Sarpanch/Upsarpanch to remain in office even when he is involved in a serious offence involving moral turpitude. It has to be appreciated that a simple majority of the members of the panchayat cannot remove the Sarpanch/Upsarpanch by passing a vote of no confidence. A majority of the total number of members of the panchayat can only move a motion of "no confidence" against the Sarpanch/Upsarpanch but such motion can be passed only by a majority of not less than two thirds of the total number of members of the Panchayat as provided in Section 56(2) of the Act. Under the circumstances the legislature in its wisdom thought it fit to confer the power to suspend a Sarpanch/Upsarpanch on a senior responsible officer being the District Development Officer - who is the chief executive officer of the District Panchayat two tiers above the Gram Panchayat -in case the case falls within the four corners of Section 59(1) of the Act.

3. As far as the test of vires on the ground of procedural fairness is concerned, three inbuilt safeguards are required to be noted. In the first place, the Section does not exclude application of the principles of natural justice. The learned counsel for the State Government and for the other respondents have also fairly and rightly stated that the Sarpanch/Upsarpanch is entitled to get a show cause notice; an opportunity to submit his reply and also to have personal hearing before the District Development Officer exercising the power under Section 59(1) of the Act and also before the Appellate Authority of the State Government. Secondly, the section confers discretion on the authority by using the word "may". Hence, institution of criminal proceedings in respect of an offence involving moral turpitude does not per se result into suspension of a Sarpanch/Upsarpanch. Thirdly, the order of suspension passed by the District Development Officer may be challenged in appeal before the State Government under section 59 (3). In view of the above discussion, the provisions of section 59(1) of the Act must be held to be constitutionally valid even on the touchstone of procedural fairness.

4. That brings us to the petitioner's challenge to the order of suspension i.e. challenge to the exercise of the power in this particular case. The scope of this challenge can be only within the limited scope of judicial review as per the settled legal position. The

principal argument of the learned Counsel for the petitioner is that the impugned order of suspension passed by the District Development Officer and confirmed by the Additional Development Commissioner in appeal deserves to be quashed and set aside on the ground of non-application of mind to a vital defence which was repeatedly pointed out by the petitioner before both the authorities. It is therefore, necessary to refer to facts urged by the petitioner before the authorities and also narrated in details in the memo of the petition.

5. According to the petitioner, he is the Sarpanch of Bhimsar Group Gram Panchayat for last 8 years and prior thereto he was Sarpanch for five years. The Gram Panchayat had passed a resolution for removing encroachment on the land of the panchayat and for implementing the said resolution in January 1997, the petitioner had also sought guidance from the authorities of the District Panchayat and the Taluka Panchayat. The petitioner had even requested the higher authorities to make arrangement for police bandobast while the encroachment was to be removed. The Taluka Development Officer (Encroachment Cell) of the Kutch District Panchayat had accordingly advised the petitioner to give notice to the encroachers and to fix a date for compliance with the notice and thereafter to avail of the assistance of the mamlatdar and the police officers of Anjar Police Station. The petitioner had accordingly given notice to 34 persons who had encroached upon the land of the panchayat, including Bharmal Naran and his father Naran Megha. Far from complying with the notice dated 10-5-1997 Bharmal Naran and Naran Megha had started putting up construction on the land in question. Hence the petitioner in his capacity as Sarpanch of the gram Panchayat filed Civil Suit against the aforesaid two persons and prayed for interim injunction to restrain them from proceeding with construction. The petitioner had also filed a Caveat in a suit which may be filed by the aforesaid encroachers for obtaining interim injunction from the Civil Court at Anjar. Ultimately, by order dated May 20, 1997, the Civil Suit at Anjar granted interim injunction in favour of the panchayat and dismissed the interim injunction application filed by the aforesaid two encroachers in their suit. Hence on May 21, 1997 the petitioner obtained assistance of the police officer of Anjar Police Station and removed the encroachment, including the encroachments, made by Bharmal Naran and his father Naran Megha.

Thereafter Bharmal Naran filed a criminal complaint with Bhuj City Police Station on June 10, 1997

being CR 35 of 1997 alleging that the complainant had filed Misc. Civil Appeal No.89 of 1997 against the order passed by the Civil Court, Anjar in the aforesaid Civil Suit No.25 of 1997 and that at the hearing of the said appeal on June 10, 1997 the petitioner herein and two others had abused the complainant for dragging the panchayat to Court and had physically assaulted the complainant and addressed the complainant in derogatory language by reference to the complainant's caste.

The petitioner has admittedly been ordered to be suspended on the ground of filing of the aforesaid criminal complaint being CR No.35 of 1997 at Bhuj City Police Station on June 10, 1997 against the petitioner for the offences punishable under Sections 323, 504, 114 of the IPC and Section 3(1)(10) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. The defence of the petitioner before both the authorities was threefold: firstly, that the complainant and 33 other persons had encroached upon a large chunk of the panchayat land which encroachment was got removed by the petitioner and therefore the complainant has filed a false complainant secondly, that on June 10, 1997 when the alleged offence took place at Bhuj the petitioner was not at Bhuj but was at Bhimsar attending the meeting of Bhimsar gram panchayat and thirdly, that the alleged incident did not amount to an offence involving moral turpitude.

7. The authorities i.e. the District Development Officer and the Additional Development Commissioner did refer to the first defence. While the District Development Officer came to the conclusion that the criminal complaint cannot be connected with the encroachment case, the Additional Development Commissioner appears to have impliedly accepted that there was some connection between the two but proceeded to hold that the removal of encroachment and the petitioner's behavior as a Sarpanch are different matters and that his behavior should be befitting his post. However, a perusal of the orders of the aforesaid authorities reveals that neither of them had applied mind to, or even considered, the second defence of the petitioner that the petitioner was not physically present at Bhuj on June 10, 1997 where the alleged offence took place, but the petitioner was at Bhimsar (70 Kms. away from Bhuj) attending a meeting of the village panchayat; still the complainant had filed a false complaint in order to wreck vengeance on the petitioner for taking

eviction proceedings against the complainant which culminated into eviction of the complainant and the father of the complainant from a large area of the public land (2700 sq.mts.) on May 21, 1997. The petitioner had produced before the District Development Officer copies of as many as 17 documents in support of his defence. Copies thereof are produced on the record of this petition also. We would also like to add here that even police papers on record of these proceedings do not reflect investigation or consideration of the aforesaid defence.

Both the authorities have, however, merely proceeded on the footing that since the criminal complaint is filed in respect of an offence involving moral turpitude the petitioner is required to be suspended and then it is for the criminal Court to give a final verdict and if the petitioner is ultimately acquitted and the term of the panchayat is not over by that time, the petitioner will be reinstated.

It is in the context of the aforesaid finding, or the absence of finding on the relevant issue, that we reiterate that Section 59(1) uses the word "may" which confers discretion on the authority and therefore, institution of criminal proceedings for an offence involving moral turpitude does not per se result into suspension of the sarpanch/upsarpanch, otherwise the hearing contemplated within the ambit of principles of natural justice as impliedly read into the provisions of section 59(1) of the Act, would be confined to decision of only two questions (i) whether the Sarpanch/Upsarpanch is the same person who is an accused in the concerned crime and (ii) whether the offence involves moral turpitude. In our view the hearing implied in Section 59(1) of the Act encompasses somewhat wider area than consideration of the above two limited questions. It is true that the District Development Officer is not to take over the role of the criminal Court nor do we intend to dilute the efficacy of the power of suspension, which power should not merely be available but also must be exercised in appropriate cases. All that we propose to do is to reiterate a note of caution which has already been sounded by this Court in the case of Naranbhai Veljibhai Chaudhary Vs. R.S.Vaghela & Ors. 38(1) GLR 599, in the following words:

" Sarpanch cannot be suspended just on institution of Criminal Case. Whether the act constitute an offence of moral turpitude, there cannot be a straitjacket formula. It depends on

various factors including the manner and circumstances in which the offence is alleged to have been committed. The rule of suspension of a person holding public office is based on a public policy to maintain purity in public life. A person facing charge of offence of moral turpitude should be barred from holding public office. However, this power in current aggressive competitive politics must be exercised with great circumspection. While criminalisation in public life is not unknown, the false implication has also become hazards of public life. This has put more pressure on the Judiciary to scrutinise such cases with more care and caution. It is true that it will not be for the Court to enter into the merits of the case, but still it is desirable to undertake brief scrutiny of the facts to rule out any chance of false implication."

(emphasis supplied)

Since the District Development Officer as well as the Additional Development Commissioner misdirected themselves about the scope of their power and felt themselves as obliged to pass order of suspension merely on the ground of institution of the aforesaid Criminal Case, as if they had no discretion whatsoever in the matter and they did not consider the vital defences urged by the petitioner, the impugned orders deserve to be set aside and the authorities are directed to reconsider the matter afresh.

8. The learned Counsel for the petitioner has also submitted that the alleged offence did not involve moral turpitude. We have, however, not examined the said submission on merits in view of the fact that even a prima facie finding on the first two defences of the petitioner will have a direct bearing on the question whether the power of suspension should be invoked in the facts and circumstances of the present case. The finding on the question whether the alleged offence, if proved, will constitute an offence involving moral turpitude may be required to be rendered in case the findings on the first two defences of the petitioner are against the petitioner. Such findings to be given by the authorities cannot and shall not bind the Criminal Court trying the aforesaid offence but the authority exercising such power of suspension is at least expected to undertake brief scrutiny of the defences urged by the Sarpanch/Upsarpanch for the purpose of giving prima facie

finding on the way to deciding the question whether this is a fit case for exercising the power of suspending the Sarpanch.

9. In view of the above discussion the order dated August 28, 1997 passed by the District Development Officer and the order dated September 10/15, 1997 passed by the Additional Development Commissioner are quashed and set aside with liberty to the District Development Officer to hear the petitioner again and to decide the matter afresh in light of the principles enunciated in this judgment.

10. This petition is accordingly partly allowed. Rule is accordingly made absolute in the aforesaid terms, with no order as to costs.

(K.Sreedharan C.J.)

(M.S.Shah J.)

Sharma